

**Jon P. FitzGerald**  
**Chief Human Rights Referee**

**March 8, 2010**

**Public Hearing of the Committee on Program Review and Investigations**

**Raised Bill No. 5348: An Act Implementing Additional Recommendations of the Program Review and Investigations Committee Concerning Retaliation for Whistleblower Complaints**

Good afternoon, Senator Kissel, Representative Mushinsky and members of the Program Review and Investigations Committee. I am Jon FitzGerald, Chief Human Rights Referee. Thank you for the opportunity, on behalf of the human rights referees at the Commission on Human Rights and Opportunities, to submit testimony on Raise Bill No. 5384, An Act Implementing Additional Recommendations of the Program Review and Investigations Committee Concerning Retaliation for Whistleblower Complaints.

This bill would amend General Statutes § 4-61dd to provide additional protection for certain whistleblowers who may be subject to retaliation by their employers.

Based on our experiences hearing whistleblower retaliation complaints, we support the legislation. The bill provides a more realistic timeframe for complainants to research their rights as to the alleged retaliatory act or threat and to solicit legal advice prior to filing a complaint. The bill also clarifies our ability to grant amendments to complaints, and establishes a more reasonable time period for the rebuttable presumption. Given the few complaints filed against large state contractors, these amendments would have little, if any, financial impact on private employers.

For your consideration, we have the following suggestions:

- Amend (b) (1) (D) to provide retaliation protection to an employee of a large state contractor who is retaliated against after making an internal whistleblower complaint;
- Add (b) (1) (E) for consistency with the beginning of that sentence, prohibiting an appointing authority from taking retaliatory action;



- Amend (b) (3) (A) to clarify that the complaint is against the entity rather than an individual since the relief that may be awarded (backpay, reinstatement) would be paid by the entity;
- Amend (b) (4) by adding "and to the exclusion of" as reinforcement of the fact that filing a complaint with the chief human rights referee or filing a complaint with the employees' review board or filing a grievance pursuant to a collective bargaining agreement are mutually exclusive alternatives;
- Amend (b) (4) by extending the period for filing a complaint with the Employees' Review Board from "thirty days" to "ninety days" for consistency with the proposed change in Raised Bill No. 5348 for filing with the chief human rights referee from thirty to ninety days;
- Amend (b) (5) to include "or discloses" for consistency with (b) (1), which uses the phrase "disclosure of information";
- Amend (b) (5) to apply the rebuttable presumption to whistleblowers who disclose information pursuant to (b) (1);
- Amend (b) (6) to apply to whistleblowers who disclose information pursuant to (b) (1);
- Amend (c) to clarify who determines whether the "whistleblowing" was knowingly and maliciously made;
- Amend (e) to apply to whistleblowers who disclose information pursuant to (b) (1);
- Amend (g) to apply to whistleblowers who disclose information pursuant to (b) (1);
- Add (i) to prohibit an employer from retaliating against an employee who has filed a whistleblower retaliation complaint or who has been a witness in a complaint proceeding (modeled after the anti-retaliatory provision in § 46a-60 (a) (4) regarding complaints filed with the Commission on Human Rights and Opportunities);
- Add (j) to avoid litigation over which amendments are to be applied retrospectively or prospectively by clarifying that all the amendments are to be applied to pending as well as future complaints;
- Add (k) to provide easier access for a complainant and the human rights referees to identify whether a private employer is a large state contractor.

A copy of our proposal is enclosed for your reference.

In addition, one of the hidden costs to a complainant is the expense of having state marshals serve subpoenas for witnesses. To reduce this cost, the Committee may want to consider a provision requiring the employer, particularly if the employer is a state agency or quasi-public agency, to produce an employee who is named as a witness upon order of the human rights referee, without the



need for, or cost of, a subpoena. There could also be a similar provision requiring the production of documents by order of the human rights referee. In the event the order was not obeyed, the human rights referee would be permitted by statute to draw the inference that the testimony of the absent witness or the information in the document would have supported the complainant's claim.

Thank you for your consideration and I would be happy to answer any questions you may have.

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**Proposal by the human rights referee for amendments to General Statutes**  
**§ 4-61dd**

**Sec. 4-61dd**

(a) Any person having knowledge of any matter involving corruption, unethical practices, violation of state laws or regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety occurring in any state department or agency or any quasi-public agency, as defined in section 1-120, or any person having knowledge of any matter involving corruption, violation of state or federal laws or regulations, gross waste of funds, abuse of authority or danger to the public safety occurring in any large state contract, may transmit all facts and information in such person's possession concerning such matter to the Auditors of Public Accounts. The Auditors of Public Accounts shall review such matter and report their findings and any recommendations to the Attorney General. Upon receiving such a report, the Attorney General shall make such investigation as the Attorney General deems proper regarding such report and any other information that may be reasonably derived from such report. Prior to conducting an investigation of any information that may be reasonably derived from such report, the Attorney General shall consult with the Auditors of Public Accounts concerning the relationship of such additional information to the report that has been issued pursuant to this subsection. Any such subsequent investigation deemed appropriate by the Attorney General shall only be conducted with the concurrence and assistance of the Auditors of Public Accounts. At the request of the Attorney General or on their own initiative, the auditors shall assist in the investigation. The Attorney General shall have power to summon witnesses, require the production of any necessary books, papers or other documents and administer oaths to witnesses, where necessary, for the purpose of an investigation pursuant to this section. Upon the conclusion of the investigation, the Attorney General shall where necessary, report any findings to the Governor, or in matters involving criminal activity, to the Chief State's Attorney. In addition to the exempt records provision of section 1-210, the Auditors of Public Accounts and the Attorney General shall not, after receipt of any information from a person under the provisions of this section, disclose the identity of such person without such person's consent unless the Auditors of Public Accounts or the Attorney General determines that such disclosure is unavoidable, and may withhold records of such investigation, during the pendency of the investigation.

(b) (1) No state officer or employee, as defined in section 4-141, no quasi-public agency officer or employee, no officer or employee of a large state contractor and no appointing authority shall take or threaten to take any personnel action against any state or quasi-public agency employee or any employee of a large state contractor in retaliation for such employee's or contractor's disclosure of information to (A) an employee of the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of this section; (B) an employee of the state agency or quasi-public agency where such state officer or employee is employed; (C) an employee of a state agency pursuant to a mandated reporter statute; **[or]** (D) in the case of a large state contractor, an employee of the large state contractor or the contracting state agency concerning information involving the large state contract or (E) the appointing authority.

(2) If a state or quasi-public agency employee or an employee of a large state contractor alleges that a personnel action has been threatened or taken in violation of subdivision (1) of this subsection, the employee may notify the Attorney General, who shall investigate pursuant to subsection (a) of this section.

(3) (A) Not later than thirty days after learning of the specific incident giving rise to a claim that a personnel action has been threatened or has occurred in violation of subdivision (1) of this subsection, a state or quasi-public agency employee, an employee of a large state contractor or the employee's attorney may file a complaint against the state agency, quasi-public agency, large state contractor or appointing authority concerning such personnel action with the Chief Human Rights Referee designated under section 46a-57. The Chief Human Rights Referee shall assign the complaint to a human rights referee appointed under section 46a-57, who shall conduct a hearing and issue a decision concerning whether the officer or employee taking or threatening to take the personnel action violated any provision of this section. If the human rights referee finds such a violation, the referee may award the aggrieved employee reinstatement to the employee's former position, back pay and reestablishment of any employee benefits for which the employee would otherwise have been eligible if such violation had not occurred, reasonable attorneys' fees, and any other damages. For the purposes of this subsection, such human rights referee shall act as an independent hearing officer. The decision of a human rights



referee under this subsection may be appealed by any person who was a party at such hearing, in accordance with the provisions of section 4-183.

(B) The Chief Human Rights Referee shall adopt regulations, in accordance with the provisions of chapter 54, establishing the procedure for filing complaints and noticing and conducting hearings under subparagraph (A) of this subdivision.

(4) As an alternative to and to the exclusion of the provisions of subdivisions (2) and (3) of this subsection: (A) A state or quasi-public agency employee who alleges that a personnel action has been threatened or taken may file an appeal not later than **[thirty] ninety** days after learning of the specific incident giving rise to such claim with the Employees' Review Board under section 5-202, or, in the case of a state or quasi-public agency employee covered by a collective bargaining contract, in accordance with the procedure provided by such contract; or (B) an employee of a large state contractor alleging that such action has been threatened or taken may, after exhausting all available administrative remedies, bring a civil action in accordance with the provisions of subsection (c) of section 31-51m.

(5) In any proceeding under subdivision (2), (3) or (4) of this subsection concerning a personnel action taken or threatened against any state or quasi-public agency employee or any employee of a large state contractor, which personnel action occurs not later than one year after the employee first transmits or discloses facts and information concerning a matter under subsection (a) of this section or subdivision (1) of this subsection to the Auditors of Public Accounts [or] the Attorney General or an employee of the state agency, quasi-public agency, large state contractor or appointing authority, as applicable, there shall be a rebuttable presumption that the personnel action is in retaliation for the action taken by the employee under subsection (a) of this section or subdivision (1) of this subsection.

(6) If a state officer or employee, as defined in section 4-141, a quasi-public agency officer or employee, an officer or employee of a large state contractor or an appointing authority takes or threatens to take any action to impede, fail to renew or cancel a contract between a state agency and a large state contractor, or between a large state contractor and its subcontractor, in retaliation for the disclosure of information pursuant to subsection (a) of this section or subdivision (1) of this subsection to any agency listed in subdivision (1) of

this subsection, such affected agency, contractor or subcontractor may, not later than ninety days after learning of such action, threat or failure to renew, bring a civil action in the superior court for the judicial district of Hartford to recover damages, attorney's fees and costs.

(c) Any employee of a state or quasi-public agency or large state contractor, who is found by the Auditors of Public Accounts, the Attorney General, the human rights referee or the Employees' Review Board to have knowingly and maliciously made false charges under subsection (a) of this section, shall be subject to disciplinary action by such employee's appointing authority up to and including dismissal. In the case of a state or quasi-public agency employee, such action shall be subject to appeal to the Employees' Review Board in accordance with section 5-202, or in the case of state or quasi-public agency employees included in collective bargaining contracts, the procedure provided by such contracts.

(d) On or before September first, annually, the Auditors of Public Accounts shall submit to the clerk of each house of the General Assembly a report indicating the number of matters for which facts and information were transmitted to the auditors pursuant to this section during the preceding state fiscal year and the disposition of each such matter.

(e) Each contract between a state or quasi-public agency and a large state contractor shall provide that, if an officer, employee or appointing authority of a large state contractor takes or threatens to take any personnel action against any employee of the contractor in retaliation for such employee's disclosure of information [to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of] pursuant to subdivision (1) of this subsection or subsection (a) of this section, the contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of the contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The executive head of the state or quasi-public agency may request the Attorney General to bring a civil action in the superior court for the judicial district of Hartford to seek imposition and recovery of such civil penalty.

(f) Each large state contractor shall post a notice of the provisions of this

section relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the contractor.

(g) No person who, in good faith, discloses information **[to the Auditors of Public Accounts or the Attorney General]** in accordance with the provisions of this section shall be liable for any civil damages resulting from such good faith disclosure.

(h) As used in this section:

(1) "Large state contract" means a contract between an entity and a state or quasi-public agency, having a value of five million dollars or more; and

(2) "Large state contractor" means an entity that has entered into a large state contract with a state or quasi-public agency.

**(i) (NEW) (1) No state officer or employee, as defined in section 4-141, no quasi-public agency officer or employee, no officer or employee of a large state contractor and no appointing authority shall take or threaten to take any personnel action against any state or quasi-public agency employee or any employee of a large state contractor because such employee has filed a complaint or testified or assisted in any proceeding under this section.**

**(2) Not later than ninety days after learning of a specific incident giving rise to a claim that a personnel action has been threatened or has occurred in violation of this subsection, a state or quasi-public agency employee, an employee of a large state contractor or the employee's attorney may file a complaint against the state agency, the quasi-public agency, the appointing authority or the large state contractor pursuant to subsections (3) or (4) of section (b).**

**(j) (NEW) The provisions of this act shall apply to all complaints commenced pursuant to section 4-61dd (b) pending on or after the effective date of this act.**

**(k) (NEW) The Auditors of Public Accounts, the Attorney General and the Office of the State Comptroller shall each post on their agency Internet web sites the names and addresses of large state contractors.**